IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1840 of 1997

For Approval and Signature:
HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DOLATRAI BALVANTRAI DESAI - Petitioner(s)
Versus
STATE OF GUJARAT & 3 - Respondent(s)

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Appearance :
MR SS SANJANWALA WITH MR RS SANJANWALA for Petitioner(s) : 1,
MR DEIPEN DESAI AGP for Respondents – State

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 25/04/2007

ORAL JUDGMENT

1. Heard Mr.S.S. Sanjanwala with Mr.R.S. Sanjanwala, learned counsel for the petitioner and Mr.Dipen Desai, learned Assistant Government Pleader for the respondents – State.

2. The petitioner – land holder, being aggrieved by the order dtd.29/1/1997 passed in Revision Case No.TEN/BA/140/95 by the Gujarat Revenue Tribunal setting aside the order passed by the Mamlatdar-cum-Agricultural Lands Tribunal ("ALT" for short) dtd.29/10/1992 in Ceiling Remand Case No.5 of 1992 and order dtd.26/11/1993, passed in Ceiling Revision case No.266 of 1993 by the learned Dy.Collector, valsad, is before this Court with the submission that the Gujarat Revenue Tribunal had no jurisdiction to interfere in the order passed by the Mamlatdar and the Dy.Collector, firstly because, the revision filed by the State Government was barred by limitation and secondly, the revisional court could not remand the matter for affording opportunity to the State Government or its officers to cross-examine the witnesses examined on behalf of the petitioner.

3. Mr.Dipen Desai, learned Assistant Government Pleader for the State has opposed this writ application.

4. So far as the question of condonation of delay is concerned, it is to be seen from para 8 of the order

passed by the Gujarat Revenue Tribunal that along with the revision application, the Dy.Mamlatdar, Valsad had filed his personal affidavit clearly stating that the Dy.Collector's order dtd.26/11/1993 was not in his knowledge and was not brought to his notice upto 22/5/1995. In his affidavit dtd.26/6/1995, the Dy.Mamlatdar had clearly stated that he was not informed by any officer about passing of the order or service of copy of such order upon him. On these facts, if the Gujarat Revenue Tribunal found / held that delay was properly explained and the same deserved condonation, this Court, in exercise of its power under Article 227 of the Constitution of India, would not interfere. Undisputedly, the Gujarat Revenue Tribunal had jurisdiction to pass such order and if a Court has power to pass an order, it can pass an order which is required in the facts of the case.

5. So far as grant of opportunity to the State Government or its officers to cross-examine the petitioner or his witnesses is concerned, after going through the records, I am unable to hold that proper opportunity to cross-examine those witnesses was afforded to the respondents

– State. Principle of Indian Evidence Act in technical sense may not apply to these revenue proceedings, but principles of natural justice with the full force would apply.

6. A statement of a witness would not be complete unless he is allowed to be cross-examined by the other-side and re-examined by the person producing him as a witness. If opportunity of cross-examination is not afforded to the other-side, then, statement of the witness would become gospel truth and it would be impossible for the court to check the credibility of such witness, who is making such statement in favour of a party.

7. After going through the complete records, I am of the considered opinion that the Tribunal was not wrong in remanding the matter to the Mamlatdar. The petition deserves to be dismissed.

8. The parties present in this Court shall appear before the concerned Mamlatdar on 14/5/2007 along with a copy of this order. The Mamlatdar shall record attendance of the parties and receive copy of such order and thereafter

shall dispose of the matter within a period of five months in accordance with the directions issued by the Gujarat Revenue Tribunal.

9. After the above order was dictated Mr.Sanjanwala, learned counsel for the petitioner argued submitting that the witnesses earlier examined despite opportunity were not cross-examined by the other-side.

10. I have gone through the copies of the statements which have been filed before this Court today itself. The concerned officer who had recorded the statement, does not record even attendance or presence of any representative of the State Government and if he simply writes (“Ulat Tapas Nathi”) “no cross-examination” then such statement appended to the statement would carry no value.

11. The petition is dismissed with the aforesaid observations and directions. Rule is discharged. No costs.

(R.S. GARG, J.)

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